bsb

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7254 OF 2007

Ramavtar Ganeshmal Agarwal & 3 ors. ... Petitioners

V/s

Shamshuddin S. Ansari ... Respondent

Mr. Avinash K. Jalisatgi for the petitioners.

Mr. Firoz A. Ansari for the respondent.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 16TH OCTOBER, 2007.

P.C.:

1. The order impugned in this petition has been passed by the Labour Court on 31.3.2007. The Labour Court has directed that the petitioners should reinstate the respondent workman with continuity of service and full back wages w.e.f. 17.7.2004.

2. The respondent workman had obtained a reference for adjudication of the dispute raised by him by the Labour Court under Section 10(1) read with 2-A of the Industrial Disputes Act. It was the case of the workman that he was employed with the petitioners for six years

and that his services had been wrongly terminated by the petitioners on 17.7.2004. The pleadings were contested by the petitioners herein by contending that the respondent workman was not employed by them although they were in fact running a factory in the place which the workman mentioned. The petitioners contended that since the workman was not employed by them, the question of giving him any notice of termination of his services or wages in lieu thereof did not arise.

3. It appears that the petitioners did not remain present before the Conciliation Officer and, therefore, as the conciliation proceedings have been failed, a reference was made by the appropriate Government.

4. A perusal of the order of the Labour Court indicates that the Labour Court has not framed proper issues before embarking on the discussion in the reference. The issue in question was as to whether there was an employer-employee relationship between the petitioners and the workman. This relationship was directly in issue in view of the pleadings contained in the statement of claim and the written statement. The Labour Court, ought to have therefore ascertained whether there was an employer-employee relationship. Merely by concluding that the factory was being run with

a number of looms at the address mentioned by the workman would not indicate that the workman was employed in the factory. The Labour Court ought to have therefore considered this issue before ascertaining whether in fact the services of the workman have been terminated on 17.7.2004. The Labour Court is thus expected to ascertain whether there was employer-employee relationship. The Labour Court ought to have then considered whether the termination of services on 17.7.2004 was illegal and thereafter what relief should be granted to the respondent workman. All these aspects have not been considered in a proper manner by the Labour Court.

5. Hence, the award is set aside.

6. The reference is remanded to the Labour Court for deciding it afresh. The Labour Court shall frame issues with the assistance of the parties. Parties shall lead additional evidence, if necessary. The Labour Court shall pass an award based on the pleadings, evidence which has already been led and any additional evidence which the parties may lead before it.

7. Writ petition disposed of accordingly.

.....